

### **REMARKS**

Claims 1, 5-41, 52, 55-63, and 71-78 are pending in the application. Applicant expresses appreciation for the allowance of claims 1, 5, 8-11, 13-41, 52, 55, 57-63, and 73-78. The Office Action does not indicate the status of claims 71 and 72 as being allowed or rejected. However, given the allowance of claims 1 and 75, Applicant assumes that claims 71 and 72 are in condition for allowance.

Claims 6, 7, 12, and 56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsuhashi (US 2003/0215960) in view of Bhattacharyya (U.S. Patent No. 6,800,892). Applicant requests reconsideration.

Page 5 of the Office Action alleges that Applicant's amendment necessitated the new grounds of rejection for claims 6, 7, 12, and 56. However, previous claims 6 and 56 depended respectively from original claims 1 and 52 and are now merely rewritten in independent form including all the limitations of the claims from which they depended. Accordingly, the entire subject matter of current claims 6 and 56 was previously considered in the September 21, 2005 Office Action which improperly rejected such claims as being anticipated by Mitsuhashi. Accordingly, Applicant's amendments to claims 6 and 56 could not have necessitated the new grounds of rejection and the present Office Action was improperly made final. Applicant requests withdrawal of the finality of the rejection.

Claim 6 sets forth a capacitor construction that includes, among other features, an insulative nitride layer between a first electrode and a surface

supporting the capacitor construction, a capacitor dielectric over the first electrode, and a second electrode over the capacitor dielectric. Page 3 of the Office Action alleges that adhesion layer 22 in Mitsuhashi made of titanium nitride discloses the claimed insulative nitride layer. However, as set forth in paragraph 25 of the present specification, titanium nitride is normally conductive. Reference to Richard J. Lewis, Sr., Hawley's Condensed Chemical Dictionary 1105 (2001), indicates titanium nitride as exhibiting a low electrical resistivity of 21.7 micro-ohm-cm, placing it clearly within the range of conductive materials.

A thorough review of Mitsuhashi, especially paragraphs 25 and 14 does not reveal any alternative compositions for respective adhesion layer 22 or adhesion layer 12. The Office Action does not support with substantial evidence its allegation that Mitsuhashi discloses an insulative nitride layer. No evidence exists that Mitsuhashi supports the titanium nitride in adhesion layer 22 being replaced with insulative material. Bhattacharyya does not remedy and is not alleged in the Office Action to remedy the deficiencies of Mitsuhashi. A combination of references cannot be considered to disclose or subject matter that is absent from both. Accordingly, claim 6 is patentable.

Applicant's assertions herein regarding the deficiencies of Mitsuhashi in disclosing the subject matter of claim 6 were previously addressed on page 16 of the Response to September 21, 2005 Office Action. The present Office Action does not contain any rebuttal of Applicant's prior assertions. Pursuant to MPEP § 706.07, final rejections "must also be clearly developed to such an

extent that applicant may readily judge the advisability of an appeal” and “should include a rebuttal of any arguments raised in the applicant’s reply.” Accordingly, the present Office Action was improperly made final at least for such additional reason.

Claims 7 and 12 depend from claim 6 and are patentable at least for such reason as well as for the additional limitations of such claims not disclosed or suggested. For example, claim 12 sets forth that the nitride layer contains silicon nitride. Page 3 of the Office Action alleges that paragraph 14 of Mitsuhashi discloses silicon nitride. Review of paragraph 14 in Mitsuhashi does not reveal any disclosure or suggestion of silicon nitride. Review of the remainder of Mitsuhashi further does not reveal disclosure or suggestion of silicon nitride. Accordingly, the Office Action fails to support rejection of claim 12 with substantial evidence.


Claim 56 sets forth a capacitor construction forming method that includes, among other features, forming an insulative nitride layer, forming a first electrode over the nitride layer, forming a capacitor dielectric over the first electrode, and forming a second electrode over the capacitor dielectric. As may be appreciated from the discussion above regarding the deficiencies of Mitsuhashi in view of Bhattacharyya as applied to claim 6, the cited combination fails to disclose or suggest every limitation of claim 56.

In keeping with Applicant’s assertions herein, Applicant requests allowance of claims 6, 7, 12, and 56 in the next Office Action.

Applicant previously filed two IDS documents, including a three-page Form PTO-1449 and a one-page Form PTO-1449, respectively, on July 21, 2003 and December 21, 2005. Applicant has not received an initialed copy of the Form PTO-1449 indicating consideration of the cited references. The Office's Image File Wrapper indicates that the Office received the subject IDS documents. Applicant requests return of the initialed forms with the next Office Action.

Respectfully submitted,

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